

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARTINA HENRY, :  
: Plaintiff : Civil Action No.: 1:15-cv-03241 (CM)  
: : ECF CASE  
- against - :  
: CAPITAL ONE BANK (USA) N.A.; :  
CHASE BANK USA, N.A.; :  
WELLS FARGO FINANCIAL NATIONAL :  
BANK; US BANK N.A.; LVNV FUNDING LLC; :  
SECOND ROUND LIMITED PARTNERSHIP; :  
EXPERIAN INFORMATION SOLUTIONS, INC.; :  
TRANS UNION LLC; and EQUIFAX :  
INFORMATION SERVICES, LLC, :  
: Defendants. :  
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**CAPITAL ONE BANK (USA), N.A.'S ANSWER AND AFFIRMATIVE DEFENSES TO  
PLAINTIFF'S COMPLAINT**

Defendant Capital One Bank (USA) N.A. ("Capital One"), by its undersigned counsel, and pursuant to Rule 12 of the Federal Rules of Civil Procedure states as follows for its Answer and Affirmative Defenses to Plaintiff Martina Henry's ("Henry" or "Plaintiff") Complaint. All allegations not specifically admitted are denied.

**ANSWER**

**PRELIMINARY STATEMENT**

1. Capital One admits that Plaintiff purports to bring several causes of action in the Complaint but denies that Plaintiff has grounds for doing so against Capital One. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1 of the Complaint and, therefore, those allegations are deemed denied.

2. Capital One denies the allegations regarding Capital One contained in Paragraph 2. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2 of the Complaint and, therefore, those allegations are deemed denied.

3. Capital One denies any allegations regarding Capital One contained in Paragraph 3. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3 of the Complaint and, therefore, those allegations are deemed denied.

4. Capital One admits that Plaintiff purports to bring the Complaint under 15 U.S.C. § 1681 (“Fair Credit Reporting Act” or “FCRA”), New York General Business Law § 380 (the “New York Fair Credit Reporting Act” or “NY FCRA”), and 15 U.S.C. § 1692 (“Fair Debt Collections Practices Act” or “FDCPA”), but denies that Plaintiff has grounds for doing so. Capital One denies any allegations regarding Capital One contained in Paragraph 4. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4 of the Complaint and, therefore, those allegations are deemed denied.

#### **JURISDICTION AND VENUE**

5. Capital One does not contest jurisdiction or venue.

#### **PARTIES**

6. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint and, therefore, those allegations are deemed denied.

7. Capital One admits that it is a furnisher of information as contemplated by 15 U.S.C. § 1681s-2(a) & (b), that it maintains a corporate office in Virginia, that it provides credit

card and banking services to consumers throughout the United States, and that it is qualified to do business in the State of New York. Capital One denies the remaining allegations in Paragraph 7.

8. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint and, therefore, those allegations are deemed denied.

9. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint and, therefore, those allegations are deemed denied.

10. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint and, therefore, those allegations are deemed denied.

11. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint and, therefore, those allegations are deemed denied.

12. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint and, therefore, those allegations are deemed denied.

13. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint and, therefore, those allegations are deemed denied.

14. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint and, therefore, those allegations are deemed denied.

15. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint and, therefore, those allegations are deemed denied.

#### **FACTUAL BACKGROUND**

16. Capital One denies any allegations regarding Capital One contained in Paragraph 16. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16 of the Complaint and, therefore, those allegations are deemed denied.

17. Capital One admits that Plaintiff filed a police report with the New York Police Department on or about March 28, 1999, which report speaks for itself, and Capital One denies any allegations in Paragraph 17 inconsistent with or mischaracterizing the report.

18. Capital One denies any allegations regarding Capital One contained in Paragraph 18. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 18 of the Complaint and, therefore, those allegations are deemed denied.

#### **FACTS RELATING TO CAPITAL ONE ACCOUNTS**

19. Capital One admits that it filed three lawsuits against plaintiff with regard to the three subject accounts. Capital One denies the remaining allegations of Paragraph 19.

20. Capital One admits that it received correspondence from Plaintiff in 2011 and 2014. Capital One denies the remaining allegations contained in Paragraph 20.

21. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint and, therefore, those allegations are deemed denied.

22. Capital One denies the allegations regarding Capital One contained in Paragraph 22. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 22 of the Complaint and, therefore, those allegations are deemed denied.

#### **FACTS RELATING TO THE CHASE ACCOUNTS**

23. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint and, therefore, those allegations are deemed denied.

24. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of the Complaint and, therefore, those allegations are deemed denied.

25. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Complaint and, therefore, those allegations are deemed denied.

#### **FACTS RELATING TO THE US BANK ACCOUNT**

26. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint and, therefore, those allegations are deemed denied.

27. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint and, therefore, those allegations are deemed denied.

28. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 of the Complaint and, therefore, those allegations are deemed denied.

29. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 of the Complaint and, therefore, those allegations are deemed denied.

30. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the Complaint and, therefore, those allegations are deemed denied.

#### **FACTS RELATING TO THE WELLS FARGO ACCOUNT**

31. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 of the Complaint and, therefore, those allegations are deemed denied.

32. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 of the Complaint and, therefore, those allegations are deemed denied.

33. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 of the Complaint and, therefore, those allegations are deemed denied.

34. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 of the Complaint and, therefore, those allegations are deemed denied.

**FACTS REALTING TO THE LVNV FUNDING ACCOUNTS**

35. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 of the Complaint and, therefore, those allegations are deemed denied.

36. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint and, therefore, those allegations are deemed denied.

37. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 of the Complaint and, therefore, those allegations are deemed denied.

38. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 of the Complaint and, therefore, those allegations are deemed denied.

**FACTS RELATING TO THE SECOND ROUND ACCOUNT**

39. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 of the Complaint and, therefore, those allegations are deemed denied.

40. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 of the Complaint and, therefore, those allegations are deemed denied.

41. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 of the Complaint and, therefore, those allegations are deemed denied.

42. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 of the Complaint and, therefore, those allegations are deemed denied.

**FACTS RELATING TO THE PLAINTIFF'S DAMAGES**

43. Capital One denies any allegations regarding Capital One contained in Paragraph 43. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 43 of the Complaint and, therefore, those allegations are deemed denied.

**FIRST CAUSE OF ACTION**  
VIOLATION OF THE FCRA  
AGAINST ALL DEFENDANTS

44. Capital One incorporates and reasserts its responses to Paragraphs 1 through 43 above.

45. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 of the Complaint and, therefore, those allegations are deemed denied.

46. Capital One denies the allegations regarding Capital One contained in Paragraph 46 of the Complaint. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 46 of the Complaint and, therefore, those allegations are deemed denied.

47. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 of the Complaint and, therefore, those allegations are deemed denied.

48. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 of the Complaint and, therefore, those allegations are deemed denied.

49. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint and, therefore, those allegations are deemed denied.

50. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 of the Complaint and, therefore, those allegations are deemed denied.

51. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 of the Complaint and, therefore, those allegations are deemed denied.

52. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 of the Complaint and, therefore, those allegations are deemed denied.

53. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 of the Complaint and, therefore, those allegations are deemed denied.

54. Capital One denies the allegations regarding Capital One contained in Paragraph 54 of the Complaint. Capital One is without knowledge or information sufficient to form a belief

as to the truth of the remaining allegations in Paragraph 54 of the Complaint and, therefore, those allegations are deemed denied.

55. Capital One denies the allegations regarding Capital One contained in Paragraph 55 of the Complaint. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 55 of the Complaint and, therefore, those allegations are deemed denied.

56. Capital One denies the allegations regarding Capital One contained in Paragraph 56. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 56 of the Complaint and, therefore, those allegations are deemed denied.

57. Capital One denies the allegations regarding Capital One contained in Paragraph 57 of the Complaint. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 57 of the Complaint and, therefore, those allegations are deemed denied.

**SECOND CAUSE OF ACTION**  
VIOLATION OF THE NY FCRA  
AGAINST EXPERIAN, EQUIFAX, AND TRANS UNION

58. Capital One incorporates and reasserts its responses to Paragraphs 1 through 57 above.

59. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 of the Complaint and, therefore, those allegations are deemed denied.

60. Capital One denies any allegations regarding Capital One contained in Paragraph 60 of the Complaint. Capital One is without knowledge or information sufficient to form a belief

as to the truth of the remaining allegations in Paragraph 60 of the Complaint and, therefore, those allegations are deemed denied.

61. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 of the Complaint and, therefore, those allegations are deemed denied.

62. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62 of the Complaint and, therefore, those allegations are deemed denied.

63. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63 of the Complaint and, therefore, those allegations are deemed denied.

64. Capital One denies any allegations regarding Capital One contained in Paragraph 64 of the Complaint.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF THE FDCPA**  
**AGAINST LVNV FUNDING AND SECOND ROUND ONLY**

65. Capital One incorporates and reasserts its responses to Paragraphs 1 through 64 above.

66. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66 of the Complaint and, therefore, those allegations are deemed denied.

67. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67 of the Complaint and, therefore, those allegations are deemed denied.

68. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 of the Complaint and, therefore, those allegations are deemed denied.

69. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69 of the Complaint and, therefore, those allegations are deemed denied.

70. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70 of the Complaint and, therefore, those allegations are deemed denied.

71. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 of the Complaint and, therefore, those allegations are deemed denied.

72. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72 of the Complaint and, therefore, those allegations are deemed denied.

73. Capital One denies any allegations regarding Capital One contained in Paragraph 73 of the Complaint. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 73 of the Complaint and, therefore, those allegations are deemed denied.

74. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74 of the Complaint and, therefore, those allegations are deemed denied.

**AFFIRMATIVE DEFENSES**

Without assuming the burden of proof on any defenses that would otherwise rest with Plaintiff, and expressly denying any and all wrongdoing, Capital One alleges the following additional reasons and affirmative defenses why Plaintiff is not entitled to pursue the claims asserted in his Complaint or obtain any relief from Capital One. In addition to the Affirmative Defenses set forth below, Capital One intends to rely on all other properly provable defenses and reserves the right to amend its Answer to assert additional affirmative or other defenses to and through the time of trial in the event that its investigation or discovery indicates that additional affirmative or other defenses are appropriate.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate her alleged damages.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff has not sustained any damages compensable at law as a result of any alleged act or omission of Capital One, which alleged acts or omissions are specifically denied, and any losses Plaintiff may have suffered are the result of her own conduct and/or independent intervening or superseding causes by third parties not within the control of Capital One.

WHEREFORE, Defendant Capital One Bank (USA), N.A. prays for judgment against Plaintiff as follows:

1. That Plaintiff take nothing on her Complaint;
2. For costs of suit;
3. For an award of its reasonable attorney's fees incurred; and,
4. For such other and further relief as the Court deems just and proper.

Dated: New York, New York  
June 10, 2015

Respectfully submitted,

MCGUIREWOODS LLP

/s/ Kristina M. Allen

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